(Jail) C. J. P. R./I-91 CJM 1119 93

CF0000057645

3.8.93

APPEAL OF PRISONER

(2)

To Name शनिराम Division Bench (Criminal)

name एतवार उराँव

गदुमरिया पो. रायगढ़ Age 30 वर्ष ST No 112/92

Sentenced to आजीवन कारावास on 28-7-93

Under Section 302 भा.द.सं. by द्वितीय अतिरिक्त सत्र न्यायाधीश रायगढ़

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all. if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 28-7-93

2 Date on which copy received

3 Date on which Appeal sent 30-8-93

4 Whether the prisoner wishes to be represented or not.

No 411 Name शनिराम

Confined in जिला Jail रायगढ़

No. 1329 Dated 30-8-93 199

Forwarded to the ~~श्रीमान् मुख्य न्यायिक दण्डाधिकारी रायगढ़~~

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent

Jail

Date of receipt in Office

Date of receipt of record to accompany the

Memo of Appeal to the Appellate court

No. 2/CJM Rgh Dated 8-9- 1993

~~Forwarded to the~~ Submitted to Learned Judicial Magistrate

Dy

Date of receipt in Appellate court 8/9/93

[P. T. O.]

(26)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. App No. 111/93 सन् ~~2003~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C. BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

23.01.2006

When the matter is called out none present on behalf of the appellant. No representation is made.

Since counsel for the accused/appellant Shri Abhay Tiwari, Advocate is not present in the Court, therefore, the arguments of Shri U.N.S. Deo, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the State were heard.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J.

Accused/appellant Shaniram has preferred this appeal questioning the legality of judgment of conviction and order of sentence dated 28.7.1993 passed by learned 2nd Additional Sessions Judge, Raigarh in Sessions Trial No.118/92 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of murder of his wife Sumitra Bai convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life.

The accused/appellant is in custody for last more than about 13 years 10 months.

The prosecution case, in brief, is that on 5.4.1992 at about 11.30 p.m. in the night Amar Kumar lodged a report (Ex.P-1) in the Police Station Chakradhar Nagar, District Raigarh to the effect that he has ~~got~~ his stone quarries in Village Kohakunda, where Shaniram Uraon was working as watchman (Chowkidar)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and he was residing with his wife Sumitra Bai alongwith children. Today his clerk Punnilal Chouhan (PW- 7) came to him and informed that Shaniram has murdered his wife. On receiving this report, the Investigating Officer left for the scene of occurrence and after giving notice (Ex.P-2) to the Panchas prepared the Panchnama (Ex.P-3) of the dead body of Sumitra Bai. The Investigating Officer took into possession the plain soil and blood stained soil from the place of occurrence as well as two Gutashi (iron instrument meant for breaking stones) under Ex.P-5. He also took into possession another two Gutashi under Ex.P-6. Body of deceased Sumitra Bai was sent for postmortem examination to K.G. Hospital, Raigarh where Dr. B.S. Markam (PW-10) conducted the postmortem on the body of Sumitra Bai and prepared the postmortem report Ex.P-7 in which he opined that the deceased died on account of head injury as a result of severe bleeding and multiple fracture of skull.

After completion of investigation, charge sheet was filed in the Court of learned Judicial Magistrate First Class, Raigarh who in turn committed the case to learned Sessions Judge, Raigarh from where learned 2nd Additional Sessions Judge, Raigarh received the case on transfer for trial.

The prosecution in order to prove the charge against the accused/appellant examined eleven witnesses. Statement of accused/appellant was recorded by learned Additional Sessions Judge under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

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(28)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned Additional Sessions Judge after hearing the Additional Public Prosecutor & counsel for the accused convicted and sentenced the accused in the manner as mentioned in Para-1 of this judgment.

As the counsel for accused/appellant is not present, therefore we have perused the evidence and impugned judgment.

On the other hand, learned Additional Public Prosecutor for the State supported the judgment of trial court.

In this case there is no eyewitness, whole case rests on the circumstantial evidence and in order to convict an accused based on the circumstantial evidence, the Hon'ble Apex Court in the matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220** held that;

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

The trial Court has convicted the accused/appellant on the basis of evidence of Jogiram (PW-5), Punniram (PW-7) & Rusiram (PW-8), recovery of alleged weapon of offence Gutasi from the place of occurrence, dead body of

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

deceased Sumitra Bai was found in the premises of the house of accused/appellant, the house was locked from the outside and the accused/appellant was found missing.

As far as evidence of PW-5, Jogiram is concerned, his evidence is to the effect that 7-8 months before the day of his evidence in the evening at about 4.00 p.m. Sumitra Bai & Shaniram were quarrelling and thereafter, he left for the market. When he returned from the market at about 7.00 p.m., he did not hear any sound from the house of accused/appellant and even the light was not burning. On this he asked Rusiram to inform Amar Kumar's clerk Punnilal about the quarrel between Shaniram & Sumitra Bai. Thereafter, he alongwith Punnilal and other 4-5 villagers went to the house of Shaniram, gate of the house of Shaniram was locked but in the courtyard of the house dead body of Sumitra Bai was lying and same was covered with cloth. When they were going to lodge the report to the police station, on the way Amar Kumar and the Police Inspector met them. In the cross-examination he has stated that he had not went near Shaniram and his wife to ask them as to why they are quarrelling. Thereafter he stated that he had not seen the scuffle (मारपीट) and how Sumitra Bai died, he does not know.

PW-7 Puniram Chouhan has stated in his evidence that 3-4 months before the day of his evidence on a Sunday at about 2.30 p.m. accused Shaniram & deceased Sumitra Bai were quarrelling. He left for Raigarh where he informed the owner Amar Kumar and when he returned to village Kahuakunda at about 8.00 p.m. Dhaniram & Rusi informed him that Shaniram has murdered his wife.

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XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In the cross-examination, he has stated that it is correct to say that quarrel between Shaniram & Sumitra Bai was a common quarrel as happens in a family.

PW-8 Rusiram has stated in his evidence that 3-4 months before the day of his evidence on a Sunday his father informed him that accused Shaniram & deceased Sumitra Bai were quarrelling and light of their house is not burning, therefore, inform the same to clerk of Amar Kumar and same was informed by me to Punilal, clerk of Amar Kumar. In the cross-examination, this witness has stated that he does not know anything about the quarrel between accused and deceased.

Therefore, the evidence of Rusiram is to the effect that his father asked him to inform Punilal and he has not witnessed any quarrel between Shaniram and Sumitra Bai. As far as the evidence of PW-7 Puniram Chouhan is concerned, he has stated that Shanriram and his wife were quarrelling and quarrel was a common quarrel. The evidence of Jogiram (PW-5) is to the effect that Shaniram and Sumitra Bai were quarrelling.

As such, from the evidence of above three witnesses nothing has come on record that accused/appellant was attacking his wife with the alleged weapon of offence i.e. Gutashi, these witnesses have stated to the extent that common quarrel was there. There is no evidence to the effect that they witnessed the accused attacking Sumitra Bai with the Gutashi, weapon of offence. As far as recovery of Gutashis from the place of occurrence is concerned, there is no definite evidence that the Gutashis were recovered from inside the house. There is also no evidence to the effect that that the key of lock of the house was with the accused/appellant herein. Moreover, there is no evidence of

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Serologist that the Gutashis were stained with human blood that too of the blood group of deceased Sumitra Bai. Therefore, merely on the basis of absence of the accused/appellant from the house without any other circumstantial evidence to connect the accused/appellant with the murder of his wife Sumitra Bai, the accused/appellant cannot be connected with the murder of his wife.

In view of the above, the finding of the trial court convicting the accused/appellant Shaniram for commission of murder of his wife Sumitra Bai cannot be sustained, as the same is not based on any legal clinching evidence.

In the result, the appeal of accused Shaniram succeeds and the same is allowed. The conviction and sentence awarded to accused Shaniram under Section 302 of the I.P.C. are set aside and he is acquitted of the charge under Section 302 of the I.P.C. If accused Shaniram is not required in any other case, he be set at liberty forthwith.

Certified copy as per rules.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

Roshan/-

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